

CHAPTER 1
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The board of medical examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

653—1.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "Iowa Board of Medical Examiners".

653—1.3(17A,22) Requests for access to records.

1.3(1) Location of record. In lieu of the words "insert agency head", insert "Iowa Board of Medical Examiners" and in lieu of "insert agency name and address", insert "Iowa Board of Medical Examiners, Executive Hills West, 1209 E. Court Avenue, Des Moines, Iowa 50319-0180".

1.3(2) Office hours. In lieu of "insert customary office hours and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "the agency's regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays".

1.3(7) Fees.

c. Search and supervisory fees. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-quarter hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during the examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform this supervisory function.

If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

653—1.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "designate office" insert the words "Iowa State Board of Medical Examiners, Executive Hills West, 1209 E. Court Avenue, Des Moines, Iowa 50319-0180".

653—1.7(17A,22) Consent to disclosure by the subject of a confidential record. Insert at the end of the model rule the following new sentence. "This section does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release."

653—1.9(17A,22) Disclosures without the consent of the subject.

1.9(1) Open records are routinely disclosed without the consent of the subject.

1.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in subrule 1.10(1) or in any notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of an individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative fiscal bureau under Iowa Code section 2.52.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

653—1.10(17A,22) Routine use.

1.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

1.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a.* Disclosure to those officers, employees, investigators, members, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer, employee, investigator, member, or agent, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.
- d.* Disclosure to the attorney general’s office for use in performing its official function.
- e.* Transfers of information within the agency office and among board members; to other state agencies, boards, and departments; to federal agencies; to agencies in other states; Federation of State Medical Boards of the United States, Inc., American Medical Association, American Osteopathic Association, Iowa Medical Society, Iowa Osteopathic Medical Association; Educational Commission for Foreign Medical Graduates; Iowa Physician Assistant Society; Physician’s Assistant Advisory Committee; approved Advanced Care Training facilities; or to local units of government as appropriate to carry out the agency’s statutory authority.

f. Information released to the staff of federal or state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

g. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

h. Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

653—1.11(17A,22) Consensual disclosure of confidential records.

1.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 1.7(17A,22).

1.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter. This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.

653—1.12(17A,22) Release to subject. The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 653—1.6(17A,22). However, the agency need not release the following records to the subject:

1. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code sections 22.7(18) and 272C.6(4) or other provision of law.

2. All information in licensee complaint and investigation files maintained by the agency for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding.

3. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

4. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

5. As otherwise authorized by law.

653—1.13(17A,22) Availability of records.

1.13(1) Open records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

1.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency. (Iowa Code sections 422.70 and 422.72)

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. All information in complaint and investigation files maintained by the agency for purposes of licensee discipline except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing is confidential in accordance with Iowa Code section 272C.6(4).

d. Criminal history or prior misconduct of an applicant for licensure. (Iowa Code chapters 22, 147, and 692)

e. Information relating to the contents of an examination for licensure. (Iowa Code section 147.21)

f. Information relating to the results of an examination for licensure other than final score except for information about the results of an examination which is given to the person who took the examination. (Iowa Code section 147.21)

g. Information contained in professional substance abuse reports or other investigative reports relating to the abuse of controlled substances. (Iowa Code chapter 125 and section 228.2 and 42 U.S.C. 290 ee-3 and ff-3)

h. Minutes of closed meetings of the agency. (Iowa Code section 21.5(4))

i. The record of a disciplinary hearing which is closed to the public. However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(16) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. (Iowa Code sections 21.5(4) and 272C.6(4))

j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

k. Any other information or records made confidential by law.

1.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorized limited or discretionary disclosure as provided in rule 653—1.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 1.4(3).

1.13(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

653—1.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 1.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. The description also indicates whether the record system contains any confidential information, and includes the legal authority for confidentiality. The records systems maintained by the agency are:

1.14(1) Records of agency disciplinary hearings. These records contain information about licensees and certificants who are the subject of an agency disciplinary proceeding or other action. This information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 147A, 148, 148C, 150, 150A, and 272C. This information is stored electronically and on paper. The information contained in “records of closed” board hearings is confidential in whole or in part pursuant to Iowa Code sections 21.5(4) and 272C.6 or other provisions of the law.

1.14(2) *Information in complaint and investigation files maintained by the agency for purposes of licensee discipline.* This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing.

1.14(3) *Information on nonlicensee investigation files maintained by the agency.* This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7 or other provision of the law.

1.14(4) *Licensee disciplinary proceedings.* The following information regarding licensee disciplinary proceedings:

- a. Formal charges and notices of hearing.
- b. Completed records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4) or 272C.6.
- c. Final written decisions imposing sanctions, including informal stipulations and settlements.

1.14(5) *Continuing education records.* These records contain educational information about persons licensed or certified by the agency. This information is collected pursuant to the authority granted in Iowa Code chapter 272C. This information is stored on paper only.

1.14(6) *Examination records.* These records contain information about applicants for any of the following examinations: United States Medical Licensing Examination (USMLE), Federation of State Medical Boards of the United States, Inc. - Federation Licensing Examination (FLEX), National Board of Medical Examiners, National Board of Osteopathic Medical Examiners, National Commission for the Certification of Acupuncturists, individual state or territorial medical licensing boards, Licentiate of the Medical Council of Canada examination (LMCC), Special Purpose Examination (SPEX), or other examination approved by the board. These records may also contain information about applicants who pursue licensure by endorsement, score transfer, or other means. The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 148, 148E, 150, and 150A and is stored electronically and on paper. Portions of the examination records are confidential in part pursuant to Iowa Code sections 22.7(1), 22.7(19), and 147.21.

1.14(7) *Investigative reports.* These records contain information about the subjects of board investigations and the activities of board investigators and agents. The records include a variety of attachments such as interviews; drug audits; medical records; pharmacy records; exhibits; police reports; and investigators' comments, conclusions, and recommendations. This information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 147A, 148, 148C, 150, and 150A. This information is stored electronically on microfilm and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7, 147.21, and 272C.6(4).

1.14(8) *Licensure and certification records.* These records contain information about doctors of medicine and surgery, osteopathic medicine and surgery, and osteopathy; and registered acupuncturists who are licensed or registered by the agency. The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 148, 148E, 150, and 150A and is stored on paper, in automated data processing systems, on microfiche, on CD-ROM, floppy disk, and in the state archives. These records may contain information which is confidential under subrule 1.13(2).

1.14(9) *Personnel records.* These records contain personal information about board members, registered peer review committee members, and staff. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. This information is stored on paper and microfiche. The personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code section 22.7.

1.14(10) *Routine probation supervision reports.* These reports contain information about licensees or certificants who have been placed on professional probation as the result of an official agency disciplinary action and contain information relating to the licensees' or certificants' compliance with the terms of probation and are confidential under Iowa Code section 272C.6.

1.14(11) *Routine consent agreement monitoring reports.* These reports contain information about licensees or certificants who have been granted licensure or certification under special terms and conditions through official agency action, and contain information relating to the licensees' or certificants' compliance with the terms of the consent agreement and are confidential under Iowa Code section 272C.6.

653—1.15(17A,22) *Other groups of records.* This rule describes groups of records maintained by the agency other than record systems as defined in rule 653—1.1(17A,22). These records are routinely available to the public. The agency's files of these records may contain confidential information as discussed in rule 653—1.13(17A,22). These records may contain information about individuals. These records include:

1.15(1) *Agency calendars, agenda, news releases, statistical reports and compilations, newsletters, publications, correspondence, and other information intended for the public.* These records may contain information about individuals, including board members and staff. This information is stored on paper only.

1.15(2) *Minutes of open meetings of the agency.* These records contain information about people who participate in board meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored electronically and on paper.

1.15(3) *Records of board rule-making proceedings.* These records may contain information about individuals making written or oral comments on rules proposed by the agency. This information is collected pursuant to Iowa Code section 17A.4. This information is stored electronically and on paper.

1.15(4) *Board decisions, findings of fact, final orders, advisory opinions, and other statements of law, policy, or declaratory rulings issued by the agency in the performance of its function.* These records are open to the public except for information that is confidential according to rule 653—1.13(17A,22). This information is stored on paper and on microfilm.

1.15(5) *Other records.* The agency maintains other records which do not generally contain information pertaining to individuals. These records are routinely open to the public. These records include but are not limited to:

a. Financial reports pertaining to the agency's budget including its revenue and expenses. This information is stored electronically and on paper.

b. Blank forms utilized by the agency and its staff in the performance of its function. This information is stored on paper only.

c. Grant proposals and applications submitted by, on behalf of, or in conjunction with the agency for the purpose of performing the agency's function or furthering its goals and objectives. This information is stored on paper only.

d. A record inventory of all categories of information and records maintained by or on behalf of the board. This inventory is stored on paper only.

653—1.16(17A,22) Data processing system. The agency does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

653—1.17(17A,22) Applicability.

1.17(1) This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records.

1.17(2) This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by rules of another board or agency.

4. Apply to guarantees, including local governments or subdivisions thereof, administering state-funded programs.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative disciplinary proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

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